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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIN R. AMIE,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No. 1:20-cv-0244-JLT (PC)

**ORDER REQUIRING PLAINTIFF TO FILE A
RESPONSE**

(Doc. 1.)

THIRTY-DAY DEADLINE

Plaintiff has filed a complaint asserting constitutional claims against governmental employees and/or entities. (Doc. 1.) Generally, the Court is required to screen complaints brought by inmates seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 **I. Pleading Standard**

2 A complaint must contain “a short and plain statement of the claim showing that the pleader
3 is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp.
6 v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are not required to indulge unwarranted
7 inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation
8 marks and citation omitted). While factual allegations are accepted as true, legal conclusions are
9 not. Iqbal, 556 U.S. at 678.

10 Prisoners may bring § 1983 claims against individuals acting “under color of state law.” See
11 42 U.S.C. § 1983, 28 U.S.C. § 1915(e) (2)(B)(ii). Under § 1983, Plaintiff must demonstrate that
12 each defendant personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d
13 930, 934 (9th Cir. 2002). This requires the presentation of factual allegations sufficient to state a
14 plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
15 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to have their
16 pleadings liberally construed and to have any doubt resolved in their favor, Hebbe v. Pliler, 627
17 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless, the mere possibility of
18 misconduct falls short of meeting the plausibility standard, Iqbal, 556 U.S. at 678; Moss, 572 F.3d
19 at 969.

20 **II. Discussion**

21 Having reviewed the complaint, the Court finds the allegations so vague and conclusory
22 that it is unable to determine whether the current action is frivolous or fails to state a claim for
23 relief. The complaint does not contain a short and plain statement as required by Federal Rule of
24 Civil Procedure 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint
25 must give fair notice and state the elements of the claim plainly and succinctly. Jones v. Cmty.
26 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some
27 degree of particularity overt acts taken by the defendants that support plaintiff's claim. Id.
28 Though plaintiff's complaint is accompanied by approximately 90 pages of exhibits, the Court

declines to peruse these documents to ascertain the basis of plaintiff's claim(s). Therefore, because plaintiff has failed to comply with the requirements of Rule 8(a)(2), the complaint must be dismissed. The Court will, however, grant leave to file an amended complaint.

III. Conclusion

Plaintiff's complaint fails to state a claim on which relief may be granted. The Court will grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If plaintiff does not wish to amend, he may instead file a notice of voluntary dismissal, and the action then will be terminated by operation of law. Fed. R. Civ. P. 41(a)(1)(A)(i). Alternatively, plaintiff may forego amendment and notify the Court that he wishes to stand on his complaint. See Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004) (plaintiff may elect to forego amendment). If the last option is chosen, the Court will issue findings and recommendations to dismiss the complaint without leave to amend, plaintiff will have an opportunity to object, and the matter will be decided by a District Judge.

If plaintiff opts to amend, he must demonstrate that the alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff should note that although he has been granted the opportunity to amend his complaint, it is not for the purposes of adding new and unrelated claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff should carefully review this screening order and focus his efforts on curing the deficiencies set forth above.

Finally, plaintiff is advised that Local Rule 220 requires that an amended complaint be complete without reference to any prior pleading. As a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer serves a function in the case. Id. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged. The amended complaint should be clearly titled, in bold font, "First Amended Complaint," reference the appropriate case number, and be an original signed under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P. 8(a).

1 Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief
2 above the speculative level . . .” Twombly, 550 U.S. at 555 (citations omitted). Accordingly, the
3 Court **ORDERS** that:

- 4 1. Within thirty days from the date of service of this order, plaintiff must file either a
5 first amended complaint curing the deficiencies identified by the Court in this order,
6 a notice of voluntary dismissal, or a notice of election to stand on the complaint; and
- 7 2. If plaintiff fails to file a first amended complaint or notice of voluntary dismissal, the
8 Court will recommend the action be dismissed, with prejudice, for failure to obey a
9 court order and failure to state a claim.

10
11 IT IS SO ORDERED.

12 Dated: April 14, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE